IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 528 of 1999
with
Civil Application No. 12384 of 1999
with
Appeal from Order No. 529 of 1999
with
Civil Application No. 12386 of 1999
and
Appeal from Order No. 531 of 1999
with
Civil Application No. 12406 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MAHENDRA AND MAHENDRA SEEDS PVT.LTD.
Versus
MAHINDRA & MAHINDRA LTD.

Appearance:
MR YJ TRIVEDI for appellant in all AOs
MR RR SHAH for Respondent in all AOs

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 10/05/2002

COMMON ORAL JUDGEMENT

1. What is challenged in these three Appeals from Orders which are filed under Order 43 Rule 1 (r) of the Code of Civil Procedure ('the Code' for short), are three separate orders all dated September 15, 1999 recorded below application Ex.6, notice of motion, in Civil Suit No. 5319 of 1996, 5321 of 1996 and 5320 of 1996 by the learned Judge of the City Civil Court, Court No.25, Ahmedabad, by which application Ex. 6, notice of motion, in all the aforementioned suits seeking ad-interim injunction under the provisions of Order 39 Rule 1 and 2 of the Code in terms of para 18 (a), (b) and (c) of the application till disposal of the suits moved by the respondent against the appellant came to be allowed and temporary injunction in terms of para 18 (a), (b) and (c) of the application is granted till final disposal of the suits on merits.

2. As these three AOs involve determination of common question of law and facts, by the consent of the learned advocates appearing for the parties, the matters are heard at length at admission stage and decided by way of final hearing by this common judgment.

3. In order to appreciate the controversy between the parties, it would be advantageous to refer to the facts stated in AO No. 528 of 1999 which is arising out of Civil Suit No. 5319 of 1999.

4. Appellant is the defendant whereas respondent is the plaintiff and for the sake of convenience and brevity, they are referred to in this judgment hereinafter as 'plaintiff' and 'defendant'.

5. Plaintiff is a company incorporated and registered under the Companies Act, 1913 and an existing company under the Companies Act, 1956. The plaintiff carries on business inter alia of manufacturing two and four drive utility vehicles, tractors, farm equipments and parts and accessories thereof. The plaintiff was incorporated on October 2, 1945 with the name "Mahindra and Mohammed Limited". The subscribers to the Memorandum and Articles of Association of "Mahindra and Mohammed Limited" were Mr. K.C. Mahindra and Mr. Inam Mohammed who were the Promoters of the Company. The name was subsequently changed to "Mahindra and Mahindra Limited" on January 13, 1948. The name of the plaintiff was adopted after its promoter, Mr. K.C. Mahindra.

6. The word "Mahindra" forms a prominent part and feature of the plaintiff's corporate name. It is also a registered trade mark of the plaintiff being registered under Registration No. 338997 in respect of goods in class 12 of the 4th Schedule to the Trade & Merchandise Marks Act, 1958 ('the Act' for short).

7. The plaintiff is a flagship company of the "Mahindra Group of Companies" in which 15 companies are included, namely:
(i) Mahindra and Mahindra Financial Services Limited;
(ii) Mahindra Exports Limited;
(iii) Mahindra Steel Services Centre Limited;
(iv) Mahindra Fort India Limited;
(v) Mahindra Applied Systems Technology Limited;
(vi) Mahindra Sintered Products Limited;
(vii) Mahindra Engineering & Chemical Products Limited;
(viii) Mahindra Network Services Limited;
(ix) Mahindra Information Technology Systems Limited;
(x) Mahindra Realty and Infrastructure Developers Ltd;
(xi) Mahindra USA Inc. USA;
(xii) Mahindra Hellenic Auto Industries S.A. Greece;
(xiii) Mahindra British Telecom Limited;
(xiv) Mahindra Holdings and Finance Limited;
(xv) Mahindra Acres Consulting Engineerings Limited.

8. According to the plaintiff, the word "Mahindra" is a registered trade mark owned by the plaintiff. The plaintiff carries on diverse activities and are engaged in industries and trade, manufacturing of car, jeep, tractor, motor spare parts, farming equipments, chemicals, hotels, real estate, exporter, computer software and computer system, etc. The annual turnover of the plaintiff and some of its group companies exceeds Rs.3,000 crores. The money spent by the plaintiff on advertising and market development for the last ten years is about Rs.900 crores.

9. On account of high quality of products manufactured and sold by the plaintiff as also high quality of products and services of other group companies, the name and trade mark of "Mahindra" used singularly as also "Mahindra and Mahindra" have acquired tremendous reputation and goodwill among members of public throughout the world including India. The name and trade mark "Mahindra" and/or "Mahindra and Mahindra" have come to be identified exclusively with the plaintiff and the plaintiff's Group Companies and their businesses, products and services by members of all trade and of the public. Any reference to "Mahindra" or to "Mahindra and

Mahindra" immediately connotes reference to the plaintiff and/or the plaintiff's Group Companies by the trade and public. According to the plaintiff, as a result of the reputation and goodwill acquired by the name "Mahindra" as also "Mahindra and Mahindra", use of the said name or any other deceptively similar word/s by any other person or entity as a part of its corporate name or as a trade mark or in respect of the products offered by it, would inevitably convey and is bound to suggest to the members of the public that the businesses or products of such other person/s are those of the plaintiff or are associated or connected with those of the plaintiff or emanates from the plaintiff.

10. In or about August 1996, the plaintiff came across a prospectus of one 'Mahendra and Mahendra Paper Mills Limited' which is a sister concern of the defendant. In the said prospectus a list of the names of sister concerns of the said Mahendra and Mahendra Paper Mills Limited has been given. From the said prospectus, for the first time, the plaintiff came to know about the existence of the defendant and its name. The name of the defendant is almost the same as that of the plaintiff. The only difference is that the spelling of "Mahindra" is changed to "Mahendra" by substituting "e" for "i". The words are however phonetically and visually and structurally almost identical and in any event descriptively similar. In the prospectus, the words "Mahendra and Mahendra" are written more prominently than the rest of the name. The names of the directors of the defendant mentioned in the prospectus reveal that the surname of all its directors is Parwani but that is not adopted as the corporate name of the company. The first name of the junior most director of Mahendra & Mahendra Paper Mills Limited is 'Mahendra' and he is the only director with the name 'Mahendra'. Hence there is no reason for the company to be named "Mahendra and Mahendra" except that the defendant wishes and intends to fraudulently and wrongfully deceive the members of public into believing that the defendant is an associate of the plaintiff or in some way connected with the plaintiff and to trade on the reputation of the plaintiff. The Directors of the defendant are likely to be the same and the family members of the Directors of Mahendra and Mahendra Paper Mills Limited. According to the plaintiff, the defendant adopted its name and style dishonestly with full knowledge of the plaintiff's existing name and style and with intent to trade on the plaintiff's reputation.

11. According to the plaintiff, defendant by the use

of the name/word(s) deceptively similar to that of the plaintiff's name as its corporate name and in respect of its products as well as passing off and is intending and/or likely to pass off and/or is enabling or will enable others to pass off the business and products of the defendant as those of the plaintiff. The defendant by the use of the said word/s is/are trading on the goodwill and reputation of the plaintiff. By the use of the said word/s, the defendant is creating confusion and deception in the minds of members of public and the defendant and/or its products are in some way associated or/affiliated with or authorized or licensed by the plaintiff or emanate from the plaintiff when that is not the case. A newspaper report appeared in the Times of India dated July 21, 1996 in this regard is relevant. It is also the case of the plaintiff that by using the deceptively similar word "Mahendra" used by the defendant as a part of its trading name/style also constitutes use thereof as a trade mark and is an infringement of the plaintiff's registered trade mark. From the said prospectus the plaintiff has also discovered that the defendant has several concerns which also have "Mahendra" as a part of their corporate names.

12. The plaintiff by its advocate's letter dated August 29, 1996 addressed to the defendant recorded some of the aforesaid facts and called upon the defendant inter alia to change its name. The defendant through its advocate's letter dated September 9, 1996, has raised frivolous and baseless contentions which are not tenable at law. The defendant has wrongfully alleged "honesty" in adopting, basis of adoption, approval by Registrar of Companies as a right to use the impugned name and difference in goods and refused to comply with the requisition made by the plaintiff. It is the say of the plaintiff that one Director having "Mahendra" as his first name or even otherwise did not entitle the defendant to adopt a deceptively similar name/style. The plaintiff called upon the defendant to immediately desist from using the impugned name/trading style. However, the defendant wrongfully continues to use the words "Mahendra and Mahendra" as a part of its corporate name and in relation to products to be sold by it. The defendant has thus continued to pass off and/or enabling others to pass off its business and products as and for those of the plaintiff.

13. The plaintiff, therefore, filed three different suits in the City Civil Court, Ahmedabad as under:

(i) Civil Suit No. 5319 of 1996, Civil Suit No.5321

of 1996 and Civil Suit No. 5320 of 1996 against three different companies owned by Mahendra and Mahendra which are as under:

AO No.	Civil Suit No.	Defendant's name	Products	Date of use
528/99	5319/96	Mahendra & Mahendra Seeds Pvt. Ltd.	Seeds included in Class-31	1978 Partnership is converted in limited Co. in 1982
529/99	5321/96	Mahendra Electronic	Electronic goods included in Class-09.	1983
531/99	5320/96	Mahendra Textile (India) Limited	Denims piece goods included in Class-17.	1995

14. The plaintiff filed three separate suits as referred to above against three companies of the defendant claiming relief of permanent injunction with regard to passing off action, from in any manner using as a part of its corporate name or trading style the word "Mahendra" and/or words "Mahendra and Mahendra" or any other word/s which is/are deceptively similar to "Mahindra and Mahindra" so as to pass off or to enable others to pass off the business and/or services of the defendant as those of the plaintiff or as emanating from or affiliated or in some way connected with the plaintiff and also permanent injunction with regard to passing off action from in any manner using in relation to its goods or products the word "Mahendra" and/or words "Mahendra and Mahendra" or any other word/s which is/are deceptively similar to "Mahindra" and/or "Mahindra and Mahindra" so as to pass off or to enable others to pass off the business and/or goods or products of the defendant as those of the plaintiff or as emanating from or affiliated or in some way connected with the plaintiff and also permanent injunction from in any manner infringing the plaintiff's registered trade mark

"Mahindra" registered under No.338997 by using the impugned word/mark "Mahendra" and/or "Mahendra and Mahendra" or any other word/s or mark deceptively similar to the plaintiff's registered trade mark and also claimed other ancillary reliefs.

15. Alongwith the suit, the plaintiff also moved three separate applications Ex.6, notice of motion, in each suit against the defendant claiming ad-interim injunction during the pendency of the suits wherein the reliefs claimed are as under:

"(a) that pending the hearing and final disposal of the suit the defendant by itself, its servants, its agents or otherwise howsoever be restrained by an order of permanent injunction of this Hon'ble Court from in any manner using as a part of its corporate name or trading style the word "Mahendra" and/or words "Mahendra and Mahendra" or any other word/s which is/are deceptively similar to "Mahindra and Mahindra" so as to pass off or to enable others to pass off the business and/or services of the defendant as those of the plaintiff or as emanating from or affiliated or in some way connected with the plaintiff;

(b) that pending the hearing and final disposal of the suit defendant by itself, its servants or otherwise howsoever be restrained by an order of permanent injunction of this Hon'ble Court from in any manner using in relation to its goods or products the word "Mahendra" and/or the words "Mahendra and Mahendra" or any other word/s which is/are deceptively similar to "Mahindra" and/or "Mahindra and Mahindra" so as to pass off or to enable others to pass off the business and/or goods or products of the defendant as those of the plaintiff or as emanating from or affiliated or in some way connected with the plaintiff;

(c) that pending the hearing and final disposal of the suit the defendant by itself, its servants or otherwise howsoever be restrained by an order of permanent injunction from in any manner infringing the plaintiff's registered trade mark 'Mahindra' registered under

No.338997 by using the impugned word/mark "Mahendra" and/or Mahendra and Mahendra" or any other word/s or mark deceptively similar to the plaintiff's registered trade mark;

(d) interim and ad-interim reliefs in terms of prayers (a), (b) and (c) hereinabove;

(e) for the costs of and incidental to the application, and

(f) for such further and other reliefs as the nature and circumstances of the case may require."

16. In the said application, prima facie case and balance of convenience both are also pleaded and it is also claimed that if the ad-interim injunction as prayed for is not granted, it would cause irreparable loss and damage to the reputation and goodwill of the plaintiff and has also the loss to its products and if such relief is granted, no prejudice will be caused to the defendant and therefore prayed to grant the relief as prayed for.

17. The defendant on filing appearance in all the aforementioned three suits, contested the application Ex.6 notice of motion in all the three suits by filing separate written objections inter alia contending that the defendant is not using the word "Mahendra" as a trademark and in relation to the goods covered under the registration and also denied the allegation of infringement of trademark. It is further contended that the trade channel, the goods, the customer, the price, the get up, colour scheme of arrangement of packing material or plaintiff's product and product of the defendant are different and distinct and, therefore, there is no common field of activities and hence no chance of confusion and deception. It is contended that the defendant's products are sold by different trade mark and therefore traders, consumers and purchasing public are not likely to purchase defendant's product believing that it is a plaintiff's product and therefore there is no question of confusion or deception nor there is any possibility of passing off the defendant's goods as those of the plaintiff's goods. It is further contended that there are number of companies, firms, industries in India bearing the name 'Mahendra' in their trading style and therefore word "Mahindra" is not indicative of origin of plaintiff's business, trade or goods. It is further contended that the word "Mahindra" is not a coin invented and first used by the plaintiff even prior to the adopting of their trade name or trading style bearing the words by the plaintiff and, therefore, plaintiff's

company is not the origin inventor and first adopter of the name "Mahindra" and, therefore, the plaintiff is not entitled to claim exclusive right over the word "Mahindra".

18. It is further contended by the defendant that in the year 1978 one Mulchand alias Mahendra started a firm 'Mahendra and Mahendra Seeds Company' as a partnership firm and it started manufacturing and marketing hybrid and vegetable seeds. Before that, in 1974, Mahendrabhai was engaged in the business of electronic lines under the name and style of Mahendra Radio House and in the year 1983 he handed over the said business to his younger brother who continued the said business in the name and style of Mahendra Music and Electronics, and the reasons for adopting the same name as Mulchandbhai is also known as Mahendra and whenever the purchaser, consumer and merchants asked or ordered the product of Mahendra and Mahendra Seeds then and then purchaser, consumer and merchants were identifying that the said business 'Mahendra and Mahendra Seeds' is of defendant's predecessor only and none else. It is also contended that the business of the plaintiff and defendant is quite different and distinct. The goods manufactured and marketed by both the parties are also quite different and distinct, the logo adopted by the parties are quite distinct and therefore there are no chances of confusion or deception in the mind of purchasing public. It is denied that the name/word used by the defendant is deceptively similar to the name of the plaintiff and thereby likely to pass off the business and the product of the defendant as those of the plaintiff. Lastly it is contended that the Notice of Motion is not maintainable as it suffers from the ground of delay and latches. It is also claimed that there is no prima facie case in favour of the plaintiff nor balance of convenience tilts in its favour and if injunction is granted as prayed for irreparable injury or loss would be caused to the defendant rather than the plaintiff and urged to dismiss the notice of motion.

19. Having heard the learned advocates for the plaintiff and the defendant and on analysis, appreciation and evaluation of the pleadings of the parties and documents annexed therewith and considering the judgments cited at the bar, the learned Judge of the City Civil Court, Ahmedabad, came to the conclusions:

Findings on Facts:

(i) That the plaintiff has established reputation and

that the words "Mahindra and Mahindra" has become a household name;

(ii) The use of the word 'Mahendra and Mahendra' by the defendant is deceptively similar to the plaintiff's name and is likely to cause confusion and suggest connection or association of the defendant with the plaintiff;

(iii) That the defendant when incorporated has not taken over the business carried on by the promoters of the Mahendra and Mahendra Seeds;

(iv) The promoters of the defendant can be assumed to be well aware about the business reputation of the plaintiff;

(v) No material is placed on record by the defendant about its extent of business;

(vi) Considering the totality of facts and circumstances, the balance of convenience is in favour of the plaintiff and greater mischief would occur unless injunction is granted.

Findings on law:

(a) That common field of activity is not required to be established in a passing off action;

(b) The plaintiff in a passing off action does not have to establish fraudulent intention;

(c) The plaintiff does not have to establish in a passing off action actual confusion and likelihood of probability or possibility of confusion or deception is sufficient;

(d) Deceptive words can become distinctive or acquire secondary meaning;

(e) The defence under section 34 of the Act does not apply to an artificial person;

(f) The new company does not get the natural rights of a new born individual with that name;

(g) An individual not at transferring his business and goodwill to a Company cannot confer upon a company a title to use his name.

20. The learned Judge of the City Civil Court, Ahmedabad has come to further conclusion that the plaintiff has been able to satisfy all the necessary ingredients for grant of temporary injunction, namely prima facie case, balance of convenience and irreparable loss and has held that the plaintiff would suffer irreparable loss if the defendant is continued to use name 'Mahendra and Mahendra' which would be passing off as if and it is associated with or affiliated or connected or concerned with the plaintiff company and the said loss of reputation in mind of the public cannot be compensated in terms of money.

21. On aforesaid view of the matter, the learned Judge of the City Civil Court, Ahmedabad has allowed the notice of motion and thereby granted the injunction in terms of para 18 (a) (b) and (c) to which reference is made in earlier paragraphs of this judgment till disposal of the suit on merits which has given rise to these three separate AOs at the instance of the defendant of the said suits (of the same group of companies).

22. Mr. Y.J. Trivedi, learned counsel for the defendant contended that the plaintiff's trade mark "Mahindra" is registered under class 12 - Automobile vehicle and for the purpose of infringement provisions of Section 28 and 29 of the Act are required to be considered. As per sections 28 and 29 of the Act, right of the registered proprietor is limited to the specific goods in relation to the goods in respect of which trade mark is registered and therefore in view of the provisions contained in sections 28 and 29 no infringement action is maintainable for the goods which are not registered. It is further contended by the learned counsel that Section 27 of the Act clarifies that no suit for infringement is tenable for unregistered mark and the mark is not registered in respect of the goods covered in Class other than Class 12 "automobile vehicles". The learned counsel also asserted that in this regard schedule IV of the Trade and Merchandise Marks Rules 1959 ("the Rules" for short) and states that there are about 34 classes and the application for registration is required to be filed for each class, which means that in respect of goods for each class an application is required and one application does not cover all classes, that is, for each class separate application is required to be filed and the registration of each application grants right to one class of goods and one application is required to be confined to one class as per Rule 26 (1) of the Rules. What is asserted by the learned counsel is that the purpose of the Act is

to provide right in respect of which the mark is used and it is not extended to other goods in which the mark is not used. The registered proprietor cannot enjoy monopoly in the article getting registered the mark in respect of goods falling in one class without using the same. Such monopoly is not permissible. The main thrust of the submissions of the learned counsel in this regard is that the present group of the cases is not the action for infringement of the trade mark. It is also emphasized by the learned counsel that in the absence of similarity of goods manufactured or sold by parties the test of deception or confusion amongst the consumer does not arise. According to the learned counsel, the action in passing off is not to be considered in the abstract sense but it has to be judged on the facts and circumstances of the case. It is pointed out by the learned counsel that the defendant has been doing business since 1974 using the trade mark 'Mahendra' in a wide range of products therefore the claim of exclusive user of the name made by the plaintiff does not arise at least not at the interlocutory stage as it depends upon the evidence to be led in the suit. It is also claimed by the learned counsel that in the case of passing off, the test to be applied is probability and not mere possibility of confusion or deception. On the facts and circumstances of the case, the learned counsel further submitted that grant of interim injunction in favour of the plaintiff was not at all warranted. The learned Judge of the City Civil Court has committed grave error on facts and law as there is no prima facie case in favour of the plaintiff nor balance of convenience tilts in its favour. Moreover, so far as irreparable injury is concerned, granting of injunction would obviously run against the defendant as the defendant has to close down its all units and therefore greater irreparable injury would be caused to the defendant if the order of injunction granted by the trial court is continued by this Court. It is therefore humbly prayed that the grant of interim injunction in favour of the plaintiff is not at all warranted which is required to be quashed and set aside on the facts and circumstances of the case and therefore the learned counsel submitted that all the appeals require admission and urged that all the three appeals may be admitted and interim relief granted by the learned Judge of the City Civil Court may be vacated.

23. Mr. R.R. Shah, learned counsel for the plaintiff contended that the order of interim injunction passed by the learned Judge of the City Civil Court in three suits filed by the plaintiff against the defendant in relation to the infringement and passing off action is

based on well recognized principles of law which have been aptly applied in the cases on hand. It is also emphasized by the learned counsel that the plaintiff came across a prospectus of defendant in respect of its public issue and for the first time the plaintiff then came to know about the existence of the defendant and its corporate name. According to the learned counsel, any man of average intelligence and imperfect recollection is likely to get an impression that the defendant as one of the associated companies of Mahindra and Mahindra Group. What is asserted by the learned counsel is that because of the high quality of products manufactured and sold by the plaintiff, the name and trade mark of Mahindra used singularly as also Mahindra and Mahindra have acquired tremendous reputation and goodwill among members of public throughout the world including India. The name and trade mark Mahindra and/or Mahindra and Mahindra have come to be identified exclusively with the plaintiff and the plaintiff's group companies and their business, products and services by members of all trade and of the public. Any reference to Mahindra or to Mahindra and Mahindra immediately connotes reference to the plaintiff and/or the plaintiff's group companies by the trade and public. As a result of the reputation and goodwill acquired by Mahindra as also Mahindra and Mahindra, use of the said name or any other deceptively similar word/s by any other person or entity as a part of its corporate name or as a trade mark or in respect of the products offered by it, would inevitably convey and is bound to suggest to the members of the public that the business or products of such other person/s are those of the plaintiff or are associated or connected with those of the plaintiff or emanates from the plaintiff. According to the learned counsel, the plaintiff has successfully established prima facie case and balance of convenience in its favour and irreparable loss would be suffered by it if the injunction as prayed for is not granted. Under the circumstances denial of injunction would result into irreparable loss and injury to its business and goodwill and therefore according to the learned counsel, the learned Judge of the lower court has rightly passed order granting interim injunction which does not warrant any interference in these AOs. He further contended that the jurisdiction of this Court in an AO is limited and unless and until the order impugned is shown to be perverse, capricious or unjust, the appellate court normally should not interfere in the order which is impugned before it and on the facts and circumstances of the case, there is ample evidence in favour of the plaintiff and therefore the order cannot be called capricious, perverse or unjust. It is also emphatically contended by the learned

counsel that the present plaintiff has filed suit in the High Court of Judicature at Bombay being RCS No.4007 of 1996 for perpetual injunction against the defendant company running a paper mill in the name of Mahendra and Mahendra Paper Mills Limited wherein the learned Single Judge while deciding the application, notice of motion taken out by the plaintiff, granted injunction in favour of the plaintiff. Against the said order of the learned Single Judge, the defendant company preferred appeal before the Division Bench of the same High Court which came to be dismissed. The matter was carried by the defendant before the Supreme Court by filing Special Leave Petition which also came to be dismissed. Thereafter a review petition was filed by the defendant which also came to be dismissed. Referring to the above sequence of events, it is contended by the learned counsel that the suit filed by the plaintiff against the 4th company of defendant, Mahendra and Mahendra Paper Mills Limited, in which the injunction granted by the learned Single Judge of the Bombay High Court in notice of motion in the suit filed by the plaintiff against the defendant has reached finality by the judgment of the Supreme Court and therefore this Court cannot take contrary view as the parties before this Court are the same plaintiff and the same group of companies of the defendant. On the aforesaid premises, the learned counsel said that there is no substance and merit in these AOs which deserve to be dismissed at the admission stage and hence it is urged to dismiss the AOs.

24. I have considered the submissions advanced by the learned counsel appearing for the parties. I have also gone through the averments made in the memos of the appeals, grounds set out therein, the three impugned orders which are almost identical of the same day, i.e., September 15, 1999 recorded below application Ex.6 notice of motion in three suits. I have also minutely examined the pleadings, including the documentary evidence, copies whereof have been supplied by the learned counsel during the course of their submissions and the judgments cited at the bar.

25. At the outset be it noted that following are the undisputed factual aspects of the case which are not capable of being disputed by either of the parties:

26. Plaintiff was incorporated in the name of Mahindra & Mohammed Limited on October 2, 1945. On January 13, 1948, plaintiff's name is changed to Mahindra & Mahindra Limited. The Trade Mark "Mahindra" was registered in respect of motor land vehicles, jeeps,

tractors and spare parts falling in Class 12 of the schedules to the Rules on July 27, 1978. 15 companies of Mahindra group are incorporated from time to time containing the word "Mahindra" or "Mahindra & Mahindra" as part of their corporate name. Diverse business carried on by Mahindra group of companies which business comprised of manufacturing motor vehicles such as cars, jeeps, tractors, chemicals, hotels, real estates, exports, computer software, etc. The annual turnover of the group companies of the plaintiff is more than Rs.3000 crores. In August 1996 the plaintiff came across a prospectus of Mahendra and Mahendra Paper Mills Limited and learnt about the existence of the defendant and the defendant's trading style name which contained the word "Mahendra". On July 25, 1996 a newspaper report appeared in the Times of India referring to the new companies adopting the names similar to the established companies and making a reference to the defendant. The plaintiff's advocate gave a notice dated August 29, 1996 to the defendant calling upon it to cease and desist from using the words "Mahendra" as part of its trading style. In September 1996 the defendant's advocate replied explaining that "Mahendra" is adopted with the meaning of "Maha" and "Indra" and that one of the defendant's partner/proprietor's name is Mahendra and that the defendant has sister concerns with the names having the name "Mahendra" or "Mahendra & Mahendra". In the reply, the defendant contended that it has no intention of taking benefit of the plaintiff's reputation. In October 1996 the plaintiff gave rejoinder stating that the defendant by using the impugned name is trying to show that the defendant is connected with the plaintiff and, therefore, reiterated that the defendant should comply with the plaintiff's requisitions. On October 11, 1996 the plaintiff filed suit being Suit No.4007 of 1996 before the High Court of Bombay against Mahendra and Mahendra Paper Mills Limited for identical reliefs as in the present suits. On October 30, 1996 the plaintiff filed three suits being Suit Nos. 5319, 5320 and 5321 all of 1996 before the City Civil Court, Ahmedabad against three different companies of the defendant with an application in each suit which are registered as notice of motion for ad-interim relief and affidavit of Mr. Raghavan Iyer in support of each application was also filed. Civil Suit No.5319 of 1996 is filed against Mahendra & Mahendra Seeds Private Limited, whereas Civil suit No. 5320 of 1996 is filed against Mahendra Denims (India) Limited and Civil Suit No. 5321 of 1996 is filed against Mahendra Electronics. On October 30, 1996 no ad-interim relief was granted by the learned Judge on the notice of motion taken out by the plaintiff in each suit.

On November 5, 1996 no ad-interim relief was granted by the learned Single Judge of the Bombay High Court on the notice of motion in the suit filed by the plaintiff against Mahendra and Mahendra Paper Mills Limited. On November 1, 1996 a common affidavit of Mulchand alias Mahendra G. Parwani is filed in reply to the notice of motion contending as under:

(a) In 1974 Mahendra started sole Proprietary business in Gujarat in the name of Mahendra Radio House;

(b) That in 1978, Mahendra with two brothers started partnership firm in the name of Mahendra & Mahendra Seeds Company;

(c) On January 1, 1982 the partnership was converted into a limited company in the name of Mahendra & Mahendra Seeds Private Limited;

(d) In 1983 Mahendra family started another proprietary firm in the name of Mahendra Music & Electronics;

(e) In 1994 said Mahendra with his brothers incorporated Mahendra and Mahendra Paper Mills Limited;

(f) In 1995 said Mahendra with his family members incorporated Mahendra Denim (India) Limited;

(g) From 1975 advertisements were given for employing staff;

(h) On July 25, 1996, public issue of Mahendra and Mahendra Paper Mills Limited is floated;

(i) Applications are made for registration of logo;

(j) The activities of the defendant and the plaintiff are different.

27. Application taken out for ad-interim relief is registered as notice of motion for interim relief in November 1996. On January 9, 1997 Appeal No.1447 of 1996 against the order passed by the learned Single Judge of the Bombay High Court in the suit filed against Mahendra and Mahendra Papers Mills Limited rejecting the ad-interim relief came up for admission before Division Bench of the Bombay High Court and the same was dismissed and the notice of motion was expedited. Thereafter the plaintiff filed rejoinder to the notice of motion pointing out that-

(a) the defendant is a separate and independent legal entity and has not taken over any business of any erstwhile partners carrying on business sin the name of "Mahendra & Mahendra Seeds",

(b) the name of the partner being Mahendra is no justification for incorporating a company with the name similar to that of the plaintiff,

(c) there is no incorporated company in India under the name of "Mahendra & Mahendra" in the telephone directory of Ahmedabad as referred to by the defendant and

(d) the balance of convenience is in the plaintiff's side.

28. On April 23, 1996 the single Judge of the Bombay High Court granted injunction against Mahendra and Mahendra Paper Mills Limited in the notice of motion filed by the plaintiff. On December 2, 1998 the appeal filed by Mahendra and Mahendra Paper Mills Limited against the order passed by the learned Single Judge of the Bombay High Court was dismissed by the Division Bench of the Bombay High Court. On September 15, 1999, the learned Judge of the City Civil Court, Ahmedabad granted injunction against the defendant in the notice of motion filed by the plaintiff.

29. On the aforesaid undisputed factual scenario, the question which falls for determination in this batch of appeals is whether on the facts and in the circumstances of the case the learned Judge of the City Civil Court, Ahmedabad has committed any error in granting the prayer of interim injunction in all the three suits in favour of the plaintiff?

30. The plaintiff's case is based on the principles laid down as early as in 1842 when Lord Langdale MR in Perry vs. Trufitt, observed "a man is not to sell his own goods under the pretext that they are the goods of another man; he cannot be permitted to practice such a deception, nor use means which contribute to that end. He cannot, therefore, be allowed to use names, marks, letters or indica by which he may induce the purchasers to believe that the goods which he is selling are the manufacture of another person" Lord Diplock in Warnik vs. Townend, (1979) AC 731 at 740 described the Tort of Passing off as the protean law of action under the English law available to a trader who wishes to complain of unfair trading.

31. The nature of passing off action was formulated by Lord Diplock in Star Industrial Co. Ltd. vs. Yap Kwee Kor, (1976) FSR 256 in the following terms "A passing action is a remedy for the invasion of a right of property not in the mark, name or get-up improperly used, but in the business or goodwill likely to be injured by misrepresentation and the passing off one person's goods as the goods of another. Goodwill as the subject of proprietary rights is incapable of subsisting by itself. It has no independent existence apart from the business to which it attached."

32. A plaintiff can maintain a passing off action also in respect of similarity of name adopted by the defendant. Lord Blackburn in Singer Manufacturing Co. v. Loog (1882) 8 Appeal Cases page 15 at 32 observed "There is another way in which goods not of the plaintiff's may be sold as and for the plaintiff, though it is not, and never was, impressed on the goods, or on the package in which they are contained, so as to be a trade mark, properly so called, or within recent statutes. Where it is established that such a trade name bears that meaning, I think the use of that name, or one so nearly resembling as to be likely to deceive as applicable to goods not the plaintiff's, may be the means of passing off those goods as and for the plaintiff's just as much as use of a trade mark, and I think the law (so far as not altered by legislation) is the same".

33. In a passing off action, the plaintiff is required to establish (1) reputation, (2) misrepresentation and (3) damage (See Reckitt Coleman vs. Borden, (1990) 1 All England Reports 873 at 890).

34. Applying the principles laid down by Foreign Courts as referred to above to the facts of the present case, the plaintiff has established reputation. The plaintiff has also established misrepresentation as the name of the defendant is deceptively similar to that of the plaintiff and considering the extensive nature of the activities of the plaintiff from manufacturing motor vehicles to chemicals, hotels, real estates, exports, computer and software, the use of the impugned name by the defendant is likely to lead the members of the public to believe that the defendant is in some way connected with the plaintiff. The name of the defendant is calculated to lead the people to believe that it is an agency or department of the plaintiff (See Kerly's Law of Trade Marks and Trade Names, 12th Edition, paragraph 16 52 page 392). The plaintiff has also established damage

inasmuch as (i) a confusion that the defendant is part of the plaintiff's group affects the reputation of the plaintiff, (ii) there is an erosion of the distinctiveness of the plaintiff's name, (iii) the plaintiff not having any control over the defendant's business, the possibility of the defendant supplying goods of inferior quality will result in damaging the plaintiff's reputation. It was held in Lego System vs. Lego (1983) FSR 155 at 190 that "the mere fact that the use of the plaintiff's name by the defendant is outside the plaintiff's control leads to damage because it prevents the plaintiff from controlling the reputation to which the goodwill is attached."

35. It is a settled legal position that it is not necessary for the plaintiff in a passing off action to establish that there is a common field of activity. The judgment of Justice Wynne-Parry in McCulloch vs. Lewis A. May (Produce Distributor) Limited, (1947) 2 All England Reports 825 at 845 was criticised in later cases (See Anderson vs. Radio Corp. PTY. (1969) RPC 218, Amis Corta vs. Pionex International Ltd. (1977) FSR 46 at 48, Eslyon J. describing McCullough vs. May as having been decided on far too narrow grounds. Mirage Studio vs. Counter Feat Clothing C. (1991) FSR 145 at 157 where it was observed that "the so-called requirement of law that there should be a common field of activity is now discredited.")

36. The following Indian cases also establish the principle that the common field of activity is not a sine qua non of a passing off action (1) Kirloskar Diesel v. Kirloskar Proprietory Ltd. AIR 1996 Bom. 149 at 163 paragraph 13, (2) A. Volvo vs. Volvo Steel Ltd., (1998) PTC page 47 at 93 paragraph 61, where it was observed that "it is also clear to us that as a matter of law, the common field of activity is not required to be established if there is a common field of activity, the possibility of deception is very high and if there is no common field of activity, the possibility may be less, but it cannot be laid down as a rule of law that there can be no possibility at all" (3) Bata (India) Limited vs. Pyarelal & Company, AIR 1985 All. 242.

37. The real question is whether considering the diverse activities of the plaintiff's group companies, the traders and members of the public will be led to believe that the defendant company is connected with the plaintiff's group carrying on business of manufacturing paper, etc. Another question is whether the traders and the members of the public will be put in a state of

wonderment as to whether the defendant company forms part of the plaintiff group.

38. The Courts have recognized the principle that confusion will arise if people are led to believe that the defendant is connected with the plaintiff or in some way mixed up with them. See (1) Ewing vs. Buttercup Margarin Ltd. (1917) 2 Chancery, page 1 (2) British Ligeon vs. British Ligeon Club (1931) 48 RPC 555, (3) Annabell's vs. Sebock (1972) RPC 838, (4) HP Balmer Limited vs. Bolling (1978) RPC 79 at 117, (5) Preasurcot Co. vs. Hemley (1950) 67 RPC page 89, (6) Ames Crosta vs. Pionex International (1977) RSR 46 (7) BBC vs. Talbot Motor Co. (1981) FSR 228 (8) Walter vs. Ashton (1902) 2 Chancery 282.

39. It is on the principles that there is a likelihood of association or connection and resultant injury that the Court grants injunction even in cases of professional or non-trading associations (See British Medical Association vs. Marsh (1931) 48 RPC 565). The Court also grants injunction on the ground that the use of similar name or a mark may result in debasing the plaintiff's name or mark (See Diameller Benz v. Hybo AIR 1994 Del 239).

40. The defence of the defendant that one of the directors of the defendant has his name "Mahendrabhai" is not available to the defendant for the following reasons:

(a) the defence under section 34 of the Act is not available in a passing off action but is available only in an infringement action (See Baunme Co. Ltd. vs. Moore & Co. Ltd., (1958) 2 All England Reports 113).

(b) Such a defence is not available to an artificial person like a limited company though it may be available to a naturally born person (see (1) John Hiag & Co. Ltd. vs. John DD (1957) RPC 381 at 381 and (2) Fine Cotton Spillers vs. Harwool Cash & Co. (1924) RPC 533 at 538 and (3) Kirloskar Diesel vs. Kirloskar Proprietary Ltd., AIR 1996 Bombay 149).

41. At the cost of repetition, be it stated that as regards the passing off action, the principle of law in its simplest form is that nobody has any right to represent his goods as goods of somebody else. The passing off need not merely to goods but relates to name also. Plainly stated, thus nobody has any right to represent himself/herself or itself as somebody else if somebody else has property in the form of goodwill which

consists of reputation in the name under which it trades. In passing off action relating to name, the court has to consider whether the words used in the trade name of the plaintiff are merely descriptive words of common use or they have acquired distinctiveness or secondary meaning in connection with the plaintiff's business so that the use of those words in the trade name adopted by another is likely to deceive the public. The court is required to consider further whether there is reasonable probability that the use of the name adopted by the defendant is likely to mislead the customers of the plaintiff by reasons of similarity of two trade names. In the case of trading name under which diversified business activities are carried on such trading name has acquired secondary meaning almost a household word - the complaining plaintiff would ordinarily succeed if the defendant has adopted identical or similar trading name even if common field of activity does not exist. It is true that common field of activity is relevant consideration but lack of it shall not non suit the plaintiff in passing off action. It is more than settled legal position that common field of activity is not required to be established by the complaining plaintiff in passing off action. Equally settled legal position is that in passing off action, plaintiff does not have to establish fraudulent intention on the part of the defendant. It is not even necessary to prove actual confusion. Likelihood or probability or possibility of confusion or deception is sufficient. In this background of legal position it is to be seen whether the words "Mahindra and Mahindra" used in the trade name of the plaintiff are merely descriptive words of common use or they have become distinctive or acquired secondary meaning in common with plaintiff's business so that the use of those words in the trade name adopted by the defendant is likely to deceive or confuse the public.

42. It is needless to mention that the plaintiff's name was changed in the year 1948 and since 1948 in the plaintiff's group of companies, 14 companies have been registered with the word "Mahindra" forming an integral part of its corporate name. The said 14 companies deal in diverse business, the trademark Mahindra as well as Mahindra and Mahindra have been significant part of Mahindra and Mahindra and other group of companies. The diverse business carried on by the plaintiff's group of companies are manufacture of cars, jeeps, tractors, motor spare parts, farm equipments, chemicals, hotels, real estate, export, computer software etc., etc., and its annual turn over is more than Rs.3000 corers (reference is made from annual reports) and it spends substantial

amount on sales promotion. These facts clearly demonstrate and indicate that "Mahindra and Mahindra" is a well known group of companies and is virtually a household name known to large number of public. It could therefore prima facie be said that the words "Mahindra and Mahindra" have come to acquire a distinctive meaning in connection with plaintiff's business and use of such trade name or deceptively similar by the defendant in all probability with reasonable possibility and is likely to confuse the public. The use of words Mahendra and Mahendra by the defendant which is deceptively similar to Mahindra and Mahindra is likely to confuse the public to be associated connected or affiliated with the plaintiff.

43. There is no manner of doubt that distinctiveness and secondary meaning acquired by the plaintiff of its trade name 'Mahindra' and "Mahindra and Mahindra" if used by employing similar words by the defendant or any other person even if having different field of activity would definitely result in creating confusion the public mind that it relates to the plaintiff. The defence of the defendant therefore that the defendant company is carrying on business of seeds, with Laxmi Trade Mark and that Mahendra is a common name and that there are many persons trading in the same name and that the plaintiff company carries on business in automobiles industry, electronic goods, textile piece goods and other fields of activities having no commonness have no substance.

44. In view of the above discussion, I am of the confirmed opinion that there is a prima facie case in favour of the plaintiff and Mr. Y.J. Trivedi, learned counsel for the defendant is unable to dislodge the finding recorded by the learned Judge of the lower court with respect to holding prima face case in favour of the plaintiff.

45. Now coming to the 2nd and third ingredients of the grant of injunction, that is, balance of convenience and irreparable injury are concerned, it has been decided in catena of decisions of Supreme Court as well as various High Courts that in the cases relating to trade mark or passing off action that principles of balance of convenience applies only when the scales are evenly balanced. If the scales are not evenly balanced the question of balance of convenience would not arise. The plaintiff company is in the business for more than five decades. The plaintiff and its group of companies carry on diverse business and their turn over exceeds Rs.3000 crores per year. In case the defendant is permitted to continue its business in the name of Mahendra and

Mahendra or deceptively similar to plaintiff's name Mahindra and Mahindra the public at large is likely to confuse the business of the defendant as that of the plaintiff and therefore greater mischief would be caused if the defendant is permitted to continue their business in the name of Mahendra and Mahendra. The defendant in the instant case knowingly adopted the impugned mark and having started manufacturing activities.

46. In this connection, it would be appropriate to refer to the judgment of the Bombay High Court in the case of Kirloskar Diesel Recon Pvt. Ltd. vs. Kirloskar Proprietary Ltd., AIR 1996 Bombay 149. In the said judgment, the Bombay High Court considered the scope of granting injunction in a suit for infringement of a trade mark under section 106 of the Act by the use of the mark "Kirloskar" and held as under:

> "The principle of balance of convenience applies when the scales are evenly balanced. The existence of 1st Appellant in each appeal is very recent whereas the existence of the Respondents belonging to 'Kirloskar Group of Companies' has been for over a period of 50 years. On their own showing, the Appellants are not using the word 'Kirloskar' as Trade Mark but as part of trading style whereas the Respondents have not only acquired distinctiveness and goodwill in the word 'Kirloskar' but it is even the registered Trade Mark of the 1st Respondent. There is sufficient evidence on record to show that the huge business is carried by 'Kirloskar Group of Companies'. There is nothing on record to show the extent of the business of the Appellants. The 2nd Appellant has throughout been aware about the business reputation of the respondents and efforts of the respondents in protecting their rights in the trade marks as also of preventing others to use the word 'Kirloskar' as a part of the trading name or trading style. By grant of the interim injunction in favour of the Respondents, the Appellants are not prevented from carrying on business without the word 'Kirloskar' confirming part of the corporate name of the 1st Appellant in each Appeal. In the facts of the case, the Respondents' reputation is likely to be adversely affected if the Appellants are not prevented from using names of the 1st Appellant in each appeal. In the facts of the case, the balance of convenience is not in favour of the Appellants.

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> .....The real question in each case is whether there is as a result of misrepresentation a real likelihood of confusion or deception of the public and consequent damages to the plaintiff. The focus is shifted from the external objective test of making comparison of activities of parties to the state of mind of public in deciding whether it will be confused. With the passage of time and reputation acquired, the trade mark 'Kirloskar' has acquired the secondary meaning and has become almost a household word. The judgments relied upon by Mr. Kane pertain to the cases of one type of business and not where variety of businesses have been carried by the plaintiff and defendant as in the instant case. The business activities of the respondents vary from pin to piano as borne out from the object clauses of the Memorandums of Association of the respondents. The Appellants have still to commence their business activities but as mentioned in the Memorandums of Association of 1st Appellant in each appeal, some of the object clauses therein overlap with the activities of Respondents and more particularly of Respondents Nos.6 and 7."

47. In view of this, it is clear that balance of convenience tilts in favour of the plaintiff and irreparable injury would be caused to the plaintiff.

48. At the risk of repetition, it is required to be taken judicial notice to the fact that the plaintiff had filed Civil Suit No.4007 of 1996 in the Bombay High Court for perpetual injunction against Mahendra and Mahendra Paper Mills Limited, which is also one of the companies of the group of defendant and the facts of the case of the defendant before the Bombay High Court are identical to that of the other three companies which are run and managed by the same group of companies "Mahendra and Mahendra" which are before this Court in these three AOs. In the said suit, notice of motion was taken out in which it has been held that there is a prima facie case in favour of the plaintiff and balance of convenience also tilts in favour of the plaintiff and irreparable injury would be caused to the plaintiff if injunction as prayed for is not granted and the learned Single Judge of the Bombay High Court granted interim injunction including relief of infringement action claimed in the application which are identical to the reliefs which have been claimed by the plaintiff in these three suits and

applications. The order of the learned Single Judge of the Bombay High Court was challenged before the Division Bench of the same High Court by filing Appeal No. 1058 of 1998. Division Bench of the Bombay High Court dismissed the said appeal summarily vide its judgment and order dated December 2, 1998. Aggrieved thereby the defendant carried the matter before the Supreme Court by filing Special Leave Petition which also came to be dismissed on November 9, 2001 by the Supreme Court by a reasoned order. The said judgment is reported in 2001 AIR SCW 4679 = AIR 2002 SC 117. In the said reported judgment the Supreme Court has considered its following previous decisions:

(i) Corn Products Refining Co. v. Shangrila Food Products Limited, 1960 (1) SCR 968 = AIR 1960 SC 142.
(ii) Wander Ltd. v. Antox India P. Ltd., 1990 (Supp) SCC 727.
(iii) S.M. Dyechem Ltd. v. Cadbury (India) Ltd., (2000) 5 SCC 573.
(iv) Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd., (2001) 5 SCC 73.

In the said judgment, the Supreme Court has also considered following decisions of various High Courts:

(a) Sunder Parmanand Lalwani v. Caltex (India) Ltd., AIR 1969 Bombay 24.
(b) M/s. Bata India Limited v. M/s. Pyare Lal & Co. AIR 1985 All. 242.
(c) Kirloskar Diesel Recon Pvt. Ltd. v. Kirloskar Proprietary Ltd., AIR 1996 Bombay 149.

The Supreme Court in the said reported decision, after considering the law laid down by the Supreme court in its previous decisions as well as various High Court as referred to above in above decisions and considering the facts of the case before it, recorded the ultimate finding in para 23 of the reported decision which reads as under:

"Judging the case in hand on touchstone of the principles laid down in the aforementioned decided cases, it is clear that the plaintiff has been using the word "Mahindra" and "Mahindra and Mahindra" in its companies/business concerns for a long span of time extending over five decades. The name has acquired a distinctiveness and a secondary meaning in the business or trade circles. People have come to associate the name

> "Mahindra" with a certain standard of goods and services. Any attempt by another person to use the name in business and trade circles is likely to and in probability will create an impression of a connection with the plaintiffs' group of companies. Such user may also effect the plaintiff prejudicially in its business and trading activities. Undoubtedly, the question whether the plaintiffs' claim of 'passing-off action' against the defendant will be accepted or not has to be decided by the Court after evidence is led in the suit. Even so far the limited purpose of considering the prayer for interlocutory injunction which is intended for maintenance of status quo, the trial Court rightly held that the plaintiff has established a prima facie case and irreparable prejudice in its favour which calls for passing an order of interim injunction restraining the defendant-company which is yet to commence its business from utilising the name of 'Mahendra' or 'Mahendra and Mahendra' for the purpose of its trade and business. Therefore, the Division Bench of the High Court cannot be faulted for confirming the order of injunction passed by the learned single Judge."

It may also be noted that against the aforesaid judgment, a review application was also preferred by the defendant which also came to be dismissed vide order dated January 23, 2002.

49. In sum and substance the suit filed by the present plaintiff against the 4th company of the defendant in the original side of the Bombay High Court wherein the interim relief is granted in favour of the plaintiff which has reached to the finality by the judgment of the Supreme Court which is applicable to the facts of the present case as before this Court also the plaintiff and the defendant both are the same group of companies, more particularly the facts, defence and issues before the original side of the Bombay High Court and before the trial court at Ahmedabad are the same which has not been denied by the defendant.

50. The contention advanced by Mr. Trivedi, learned counsel for the defendant that the present case is not an action for infringement of trade mark in view of the clear bar contained in section 29 of the Act as the right of a registered proprietor is limited to specific goods in relation to the goods in respect of which trade mark

is registered and, therefore, no infringement action is maintainable for the goods which are not registered and also the Supreme Court in the reported decision in the case of Mahendra & Mahendra Paper Mills Limited (supra) has not decided this issue wherein the litigating parties are same which are before this Court and therefore this court must examine the scope of Section 29 of the Act, has no substance. It may be appreciated that and at the cost of repetition be it stated that the present plaintiff has filed in all four suits against the group of defendant companies. One suit is filed at the original side of the Bombay High Court whereas three suits have been filed before the City Civil Court, Ahmedabad wherein facts, pleadings, prayers and issues before both the courts are the same. The learned Judge on the original side of the Bombay High Court has granted injunction with respect to all the prayers including infringement action against the defendant. The learned Judge of the City Civil Court, Ahmedabad has also granted in all three suits relief including of infringement action against the defendant. The order delivered by the learned Single Judge of the Bombay High Court was subject matter in appeal before the Division Bench of the same court which summarily dismissed the appeal filed by the defendant. The defendant carried the said matter to the Supreme Court by filing Special Leave Petition. The Supreme Court dismissed the said SLP by a reasoned order reported in Mahendra and Mahendra Paper Mills Limited (supra). On having minute scanning of the said judgment, it is clear that the learned counsel who appeared for the defendant before the Supreme Court has raised similar contention that the action for infringement is not maintainable against the defendant. Notwithstanding the said submission, the Supreme Court has reaffirmed the decision of the learned Single Judge of the Bombay High Court which is confirmed by the Division Bench of the same court, meaning thereby, the Supreme Court has confirmed the prayer with respect to infringement action also against the defendant granted by the learned single Judge of the Bombay High Court and confirmed by the Division Bench of the same Court, therefore, now it is not open for the learned counsel for the defendant to raise the same contention before this court. It is settled principles of law that the law declared by the Supreme Court is binding to all Courts within the territory of India and it has a binding precedent. Therefore, the ultimate finding recorded by the Supreme Court in the reported decision in the suit filed by the present plaintiff against the 4th company of the defendant is binding to this court as before this court also the same plaintiff has filed three different suits

against three different companies of the defendant running with the name and style "Mahendra and Mahendra". The law laid down by the Supreme Court is a binding precedent to this court irrespective of fact that the Supreme Court has laid down the legal position without considering any other point. I am fortified in my view by the judgment of the Supreme Court in the case of Suganthi Suresh Kumar v. Jagdeeshan, AIR 2002 SC 681 wherein in paragraph 9 the Supreme Court has said that it is impermissible for the High Court to overrule the decision of the Apex Court on the ground that Supreme Court laid down the legal position without considering any other point. It is not only a matter of discipline for the High Courts in India. It is the mandate of the constitution as provided in Article 141 that the law declared by the Supreme Court shall be binding on all courts within the territory of India. In the said reported decision, the Supreme court has considered its previous decision in the case of Anil Kumar Neotia v. Union of India, AIR 1988 SC 1353. In the said judgment the Supreme Court has said that the High Court cannot question the correctness of the decision of the Supreme Court even though the point sought before the High Court was not considered by the Supreme Court. Applying the principles laid down by the Supreme Court in the above referred to two judgments to the facts of the present case, it is now not open for Mr. Trivedi, learned counsel for the defendant to raise the said contention as the said contention is squarely covered by the reported decision of the Supreme Court in the case of Mahendra and Mahendra Paper Mills Limited (supra).

51. Mr. R.R. Shah, learned counsel for the plaintiff and Mr. Y.J. Trivedi, learned counsel for the defendant have also referred to so many other case laws of the Supreme court as well as High Courts during the course of their submissions. But in my opinion, it is not expedient to refer to those decisions in this judgment to burden the same in view of the fact that the Supreme Court in the reported decision in Mahendra & Mahendra Paper Mills Limited (supra) has clearly settled the law in the suit filed by the plaintiff against the 4th company of the defendant in the original side of the Bombay High Court.

52. The end product of the aforesaid discussion is that the plaintiff has been using the word "Mahindra" or words "Mahindra & Mahindra" in its companies/business concerns for a long span of time extending over five decades. The name has acquired a distinctiveness and a secondary meaning in the business or trade circles.

People at large have come to associate the name "Mahindra" with a certain standard of goods and services. Therefore, any attempt by another person to use the name in business and trade circles is likely to and in probability will create an impression of a connection with the plaintiff's group of companies. Such user may also effect the plaintiff prejudicially in its business and trading activities. Therefore, the learned Judge of the lower court has very rightly held that there is a strong prima facie case in favour of the plaintiff and the balance of convenience also tilts in its favour and if injunction as prayed for is not granted, irreparable injury would be caused to the plaintiff.

53. In view of the above, I am in complete agreement with the reasons given by the learned Judge of the City Civil Court and the ultimate conclusion reached by him which does not warrant any interference in these AOs.

54. Seen in the above context, there is no valid reason to interfere with the impugned orders. Hence all the AOs deserve to be dismissed at their inception.

55. For the foregoing reasons, all the AOs fail and accordingly they are dismissed at the threshold with no order as to costs.

56. Since all the AOs have been dismissed at the admission stage, the civil applications filed for stay of the impugned orders now do not assume any survival value and hence the same are also dismissed with no order as to costs. Ad-interim relief granted in all the three civil applications shall stand vacated.

57. At this stage, Mr. Y.J. Trivedi, learned counsel for the defendant states that the defendant is desirous of filing appeal before the higher forum against this judgment. He, therefore, urges that the interim relief granted by this court initially which has remained operative till today may be further continued for a period of 12 weeks hereof to enable the defendant to prefer appeal against this judgment before the higher forum.

58. The aforesaid prayer made by Mr. Trivedi is seriously countered by Mr. R.R. Shah, learned counsel for the plaintiff by contending that such a prayer cannot be granted in view of the fact that the learned Judge of the lower court has recorded interim relief in favour of the plaintiff on September 15, 1999 which has been stayed by this Court till today and therefore the plaintiff is

deprived of the relief granted in its favour for such a long time. Besides this, it is also asserted by the learned counsel that since the Supreme Court has settled the law in the reported decision by which it has confirmed the stay granted by the learned Single Judge of the Bombay High Court which is confirmed by the Division Bench of the same High Court in the suit filed by the plaintiff against the 4th company of the defendant where the fact situation is identical to the fact situation before this Court and therefore such a relief cannot be granted in the facts and circumstances of the case and therefore he urged to reject the said prayer of Mr. Trivedi.

59. I have given my anxious considered thoughts to the submissions made by the learned counsel appearing for both the parties. On the facts and in the circumstances emerging from the record of the case, be it noted that relying upon the latest pronouncements of the Supreme Court and foreign courts, I have held that there is a strong prima facie case in favour of the plaintiff, the balance of convenience is also tilts in favour of the plaintiff and if the injunction is not granted as prayed for, greater irreparable injury would be caused to the plaintiff. Besides this, the Supreme Court in its reported decision in Mahendra and Mahendra Paper Mills Limited (supra) has reaffirmed the stay granted by the learned Single Judge of the Bombay High Court which is confirmed by the Division Bench of the same High Court in the suit filed by the plaintiff against the 4th company of the defendant wherein fact situation is identical to the fact situation of this case. In view of the aforesaid state of affairs, the prayer made by Mr. Y.J. Trivedi, learned counsel for the defendant cannot be granted and hence the same is rejected.

60. Record and proceedings of Civil Suit Nos. 5319 of 1996, 5
City Civil Court, Ahmedabad shall be returned to the City Civil Court, Ahmedabad, forthwith.

(A.M. Kapadia, J.)

(karan)